

Message Text

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TO AMEMBASSY MOSCOW PRIORITY

UNCLAS STATE 170689

E.O. 11652: N/A

TAGS: AMGT

SUBJECT: ZONING REGULATIONS

BELOW ARE SUGGESTED CHANGES FOR TEXT DRAFTED BY W. QUINN TO BE ENTERED INTO THE RECORD. THESE HAVE NOT BEEN CLEARED BY DAN SHEAR. K. DOBELLE WILL SIGN OFF ON A COVER LETTER AS SUGGESTED BY W. QUINN. COPIES OF CORPORATION COUNSEL OPINION ON ISSUE OF COMPLIANCE WITH EXISTING FEDERAL LAWS WILL BE PROVIDED TO COMMISSION. DO YOU HAVE ANY COMMENTS OR CHANGES TO BE MADE BEFORE QUINN'S COMMENTS GO INTO RECORD? DO YOU FEEL THAT DAN SHEAR SHOULD CLEAR COMMENTS BEFORE ENTRANCE INTO RECORD? I AM WORKING CLOSELY WITH QUINN AND EVERYTHING IS GOING SMOOTHLY.

"THIS MEMORANDUM WILL SET FORTH SUGGESTED CHANGES IN THE TEXT ADVERTISED IN CASE NO. 77-45 ON BEHALF OF THE STATE DEPARTMENT. ALSO SUBMITTED AS REQUESTED AT PUBLIC HEARING ARE COPIES OF CERTAIN CORPORATION COUNSEL OPINIONS. FINALLY, COMMENTS WITH REGARD TO COMPLIANCE OF THE PROPOSED
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TEXT WITH THE CHANCERY ACT AS SUBMITTED HERewith.
A. SUGGESTED CHANGES IN TEXT
1. SECTION 460L.8 - DELETE ENTIRE SECTION AND RENUMBER OTHER PARAGRAPHS AS APPROPRIATE. THE BASIS FOR THIS DELETION IS THREE-FOLD:
A. EXISTING CHANCERIES WHICH ARE NONCONFORMING USES MAY EXPAND AND BE REPAIRED AND REPLACED PURSUANT TO THE

CHANCERY ACT AND CORPORATION COUNSEL OPINIONS. THESE OPINIONS ARE DESCRIBED IN PART B HEREOF.

B. AS A NONCONFORMING USE AND PURSUANT TO THE CHANCERY ACT, OTHER CHANCERY USES MAY BE SUBSTITUTED AS A MATTER OF RIGHT.

C. ONLY BUILDING ADDITIONS TO CHANCERIES SHOULD BE SUBJECT TO THE NEW D-1 AND D-2 PROVISIONS, WHERE APPROPRIATE.

2. SECTION 4602.11 - DELETE STANDARD OF PARKING AT THE RATE OF ONE PARKING SPACE FOR EVERY FOUR EMPLOYEES SINCE SUCH STANDARD IS NOT A SUITABLE MEASURE OR READILY CAPABLE OF ASCERTAINMENT OR ENFORCEMENT. THE TEXT SHOULD READ AS FOLLOWS:

'4602.11 - PARKING WILL BE PROVIDED AT THE RATE OF ONE PARKING SPACE FOR EVERY EIGHT HUNDRED (800) SQUARE FEET OF GROSS FLOOR AREA DEVOTED TO CHANCERY USE.'

3. SECTION 4604.2 - DELETE PARAGRAPH AS WRITTEN AND SUBSTITUTE THE FOLLOWING LANGUAGE:

'4604.2 - IN A D-1 OR D-2 DISTRICT, A BUILDING ADDITION TO A CHANCERY ESTABLISHED PRIOR TO ,1978 (THE EFFECTIVE DATE OF THE D TEXT AMENDMENT) SHALL COMPLY WITH THE PROVISIONS OF SECTIONS 4602 AND 4605.'

THE REASONS FOR THIS SUBSTITUTED LANGUAGE ARE THAT THE PROVISIONS SHOULD NOT APPLY TO EXPANSIONS OF CHANCERY USE WITHIN AN EXISTING STRUCTURE PREVIOUSLY ESTABLISHED FOR CHANCERY PURPOSES AND FOR CLARIFICATION THAT WHERE ADDITIONS ARE PROPOSED, THEY MUST COMPLY WITH THE D-1, D-2 UNCLASSIFIED

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PROVISIONS.

4. SECTION 4605.1 - ADD ADDITIONAL CLAUSE AND SENTENCE TO THIS SUBSECTION TO READ AS FOLLOWS:

'EXCEPT AS SPECIFICALLY MODIFIED BY THIS ARTICLE. WHERE AN UNDERLYING DISTRICT IS LESS RESTRICTIVE AS IT PERTAINS TO CHANCERY USE OR INTERNATIONAL AGENCIES, THE PROVISIONS OF THE UNDERLYING DISTRICT SHALL APPLY.'

5. DELETE AMENDMENT TO PROPOSED SECTION 3101.313 BUT ADD NEW PARAGRAPH AS 4605.5 AND CHANGE EXISTING PROPOSED PARAGRAPH 4605.5 TO 4605.6. THE NEW LANGUAGE OF SECTION 4605.5 SHOULD READ AS FOLLOWS:

'A CHANCERY USE LAWFULLY ESTABLISHED PRIOR TO ,1978 (THE EFFECTIVE DATE OF THE D TEXT AMENDMENT) SHALL BE DEEMED A CONFORMING USE FOR THE PURPOSES OF SECTIONS 7106, 7107, AND 7108.'

THIS SECTION IS ADDED TO ASSURE THAT REGULATIONS ARE IN ACCORDANCE WITH THE CHANCERY ACT PROVISIONS AND PERTINENT CORPORATION COUNSEL OPINIONS.

6. THE DEPARTMENT OF STATE WOULD SUPPORT LANGUAGE SIMILAR TO THAT PROPOSED BY NATIONAL CAPITAL PLANNING COMMISSION TO MAKE ABSOLUTELY CERTAIN THAT THE CHANCERY USE IS PERMITTED IN THE D ZONES AS A MATTER OF RIGHT, SUBJECT TO

REASONABLE CONDITIONS RELATING TO THE STANDARDS SET FORTH IN SECTION 4602.22. THE ZONING COMMISSION, BY VIRTUE OF MAPPING THE D ZONES, DETERMINES THE APPROPRIATENESS OF THE USE; AND THE BOARD OF ZONING ADJUSTMENT'S ROLE WOULD BE TO IMPOSE SUCH CONDITIONS AS ARE APPROPRIATE TO CARRY OUT THE STANDARDS OF SECTION 4602.22.

B. AT THE PUBLIC HEARING, THE COMMISSION REQUESTED THAT APPLICANT FURNISH CORPORATION COUNSEL OPINIONS. THE FOLLOWING ARE SUBMITTED:

1. CORPORATION COUNSEL OPINION OF JULY 22, 1966 INDICATING THE RIGHT OF A CHANCERY LAWFULLY ESTABLISHED PRIOR TO THE CHANCERY ACT TO CONTINUE TO OCCUPY THE PREMISES FOR CHANCERY PURPOSES OR TO TRANSFER SAID PREMISES TO ANOTHER FOREIGN GOVERNMENT FOR SUCH PURPOSES.

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2. CORPORATION COUNSEL OPINION OF JANUARY 23, 1974 ESTABLISHING THAT A NONCONFORMING CHANCERY MAY BE REBUILT AND REPAIRED PURSUANT TO THE PROVISIONS OF THE CHANCERY ACT.

3. CORPORATION COUNSEL OPINION OF SEPTEMBER 1, 1967 INDICATING THAT THE CHANCERY ACT DOES NOT PRECLUDE THE REBUILDING OF A CHANCERY EVEN THOUGH IT IS LOCATED IN AN R-1-B AREA.

C. COMPLIANCE WITH CHANCERY ACT

1. THE CHANCERY ACT DOES NOT IN ANY WAY PRECLUDE THE ZONING COMMISSION'S ADOPTION OF A NEW ZONING CLASSIFICATION WHICH MIGHT INCLUDE CHANCERY USES AS A MATTER OF RIGHT. FOR EXAMPLE, THIS COMMISSION HAS ADOPTED THE W-1 ZONE WHICH PERMITS CHANCERIES.

2. THE CENTRAL PROBLEM RAISED BY A NUMBER OF PERSONS ALLEGING A CONFLICT WITH THE CHANCERY ACT RESULTS FROM A MISREADING OF A PORTION OF THE CHANCERY ACT (D.C. CODE, SECTION 5-418(C)), WHICH PROHIBITS NEW CHANCERIES 'WITHIN ANY DISTRICT OR ZONE RESTRICTED IN ACCORDANCE WITH THIS ACT TO USE FOR RESIDENTIAL PURPOSES.' OBVIOUSLY, THE D ZONES WOULD NOT BE RESTRICTED FOR 'RESIDENTIAL PURPOSES.' THERE WAS NO INTENT BY CONGRESS TO PRECLUDE ZONING COMMISSION DISCRETION TO APPROPRIATELY LOCATE CHANCERIES IN SUITABLE DISTRICTS.

3. THE METHOD CHOSEN THROUGH THE PROPOSED TEXT IS SIMPLY TO ADOPT A NEW SUBSTANTIVE ZONE AND APPLY IT TO PROPERTY WHICH ALSO HAS OTHER LAND USE RESTRICTIONS. AN ALTERNATIVE WOULD BE TO ELIMINATE THE EXISTING ZONE IN CERTAIN LOW-DENSITY AREAS AND TO PLACE THEREON A NEW ZONE PROVIDING FOR THE SAME USES. HOWEVER, THE RETENTION OF THE UNDERLYING ZONING DISTRICTS IS ENTIRELY LOGICAL AND APPROPRIATE, ESPECIALLY SINCE IT FORMS A MEANS OF ASSURING PROPER HEIGHT, BULK AND OTHER ZONING LIMITS WHICH HAVE

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TRADITIONALLY APPLIED."

QUINN CLEARED HIS COMMENTS WITH FAHEY. FAHEY HAD BEEN
CRITICAL OF MPO'S PROPOSAL BECAUSE OF TECHNICAL PROBLEMS
IT CREATED, HE FAVORED QUINN'S DRAFTING OVER MPO'S. QUINN
VIEWS THIS AS AN IMPORTANT FACTOR. VANCE

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